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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/796,305	02/07/1997	MARGARET KILIBWA	CULTOR-102US	8781

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761


DATE MAILED: 07/23/2002

37

Please find below and/or attached an Office communication concerning this application or proceeding.

MF-37

Office Action Summary

Application No. 08/796,305	Applicant(s) Kilibwa	
Examiner Lien Tran	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 10, 2002
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30-39, 41-56, and 58-63 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 30-39, 41-43, 45-56, 58, 59, and 61-63 is/are rejected.
- 7) ☒ Claim(s) 44 and 60 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other: _____

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1. Claims 30, 36, 48, 50 are rejected under 35 U.S.C. 102(b) as being anticipated by Dartey et al (4678672) for the same reason set forth in paragraph 3 of paper no. 18.
2. The 102 rejection of claims 30-32,34,39-41,43,48-49,51-52 and 56-59 over the Engelbrecht et al reference is hereby withdrawn.
3. Claims 37-38, 54-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dartey et al in view of the textbook " The Encyclopedia of Chemical Technology" for the same reason set forth in paragraph 5 of paper no. 18.
4. Claims 30-35,37-39,41-43,45-49,51-56,58-59 and 61-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Engelbrecht et al in view of the textbook " The Encyclopedia of Chemical Technology and Yanetani et al.

Engelbrecht et al disclose a method of making a baked product by forming a baking dough comprising flour, yeast, water and polydextrose (see col. 3 line 58 and table 1). The amount of polydextrose used is from above 2% to 15% based on the weigh of the flour (see col. 3 lines 50-51 and the claims). The baked product is a bread and the dough contains sugar (see col. 4).

Engelbrecht et al do not disclose adding enzymes and mono or diglyceride, using an intense sweetener, the process of making the bread as exemplified in claim 33 and the polydextrose is water soluble.

The textbook " Encyclopedia of Chemical Technology " teaches that it is common to add surfactants such as monoglyceride to yeast-raised dough product such as bread to function as crumb softener or dough strengthener. It also teaches to add enzyme such as amylase to dough to

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improve volume , texture and keeping properties. Enzyme is added to bread to slow down the firming of bread. Proteolytic enzymes can also be used to reduce mixing time of dough and to make dough more pliable.

Yanetani et al teach dietary fibers are roughly classified into water-soluble dietary fibers and insoluble ones. The soluble fibers are further divided into high molecular material and low viscosity materials such as indigestible dextrin, polydextrose etc.. (see column 33-40)

While Engelbrecht et al do not disclose the polydextrose is water soluble, they do disclose on column 3 lines 53-55 soluble, insoluble, natural and synthetic fibers work equally as well as supplemental fiber. By this disclosure, it is suggested that soluble or insoluble fibers can be used. By soluble fiber, it is meant water soluble fiber because as Yanetani et al teach fibers are roughly classified into water-soluble fiber and insoluble fiber. Thus, it would have been obvious to one skilled in the art to use water-soluble polydextrose because Engelbrecht et al teach water soluble fiber can be used and Yantani et al teach polydextrose is a water soluble fiber. It would also have been obvious to one skilled in the art at the time of the invention to add enzyme and monoglyceride to the Engelbrecht et al dough for the purposes and benefits taught by the textbook. The processes by which the bread made as claimed are conventional processes for making bread and would have been obvious to one skilled in the art. The selection of the type of sweetener would have been an obvious matter of choice depending on the taste and flavor wanted. The property of anti-staling would obviously occur in the Engelbrecht et al product because the same additive is used and range of the additive falls within the ranges claimed.

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5. Claims 44 and 60 are free of prior art for reason of record.

6. In the response filed May 10, 2002, applicant argues claims 30-31, 36 and 48-50 are not anticipated by Dartey because the claims as amended require the amount of polydextrose to be from about 1% to about 5% which is clearly outside the range of at least 5.5% of polydextrose disclosed by Dartey. Claims 31 and 49 are no longer included in the 102 rejection over Dartey. Applicant's argument is not persuasive. The claims do not set forth the amount to be exactly 5% because about 5% means the amount can be a little over 5% which does not necessarily exclude the 5.5% disclosed by Dartey. Furthermore, Dartey et al do not disclose the amount of polydextrose to be exactly 5-20% and flour to be exactly 25-85%; they disclose about 5 to about 20% polydextrose and about 25 to about 85% flour. If the amount of polydextrose is 4.8 % or even 4.5 which can be interpreted to be about 5, the amount of polydextrose is still within the range claimed.

With respect to the 103 rejection, applicant makes the same argument is not found persuasive for the same reason set forth above. Applicant further argues that a composition with a high flour content and a low polydextrose content would not achieve the desired level of caloric reduction according to Dartey. This argument is not persuasive. Dartey et al teach the broad ranges of ingredients, the selection of any amount falling within the ranges taught is within the teaching of Dartey. Applicant further argues the secondary reference does not cure the deficiencies of Dartey with regard to the quantity of polydextrose. The textbook reference was

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only relied upon for the teaching of adding enzyme and why it would have been obvious to add the enzyme.


The argument directed at the Engelbrecht et al are not addressed because a new ground of rejection is made with respect to the reference.

7. Applicant's arguments filed May 10, 2002 have been fully considered but they are not persuasive.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

July 18, 2002


LIEN TRAN
PRIMARY EXAMINER
Group 1700